

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN KEN TOOLE**, on March 8, 2005 at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Ken Toole, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Essmann (R)
Sen. Dan Harrington (D)
Sen. Dave Lewis (R)
Sen. Greg Lind (D)
Sen. Dan McGee (R)
Sen. Gary L. Perry (R)
Sen. Glenn Roush (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: Casey Barrs, Legislative Branch
Claudia Johnson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 153, 3/4/2005; HB 199, 3/4/2005
Executive Action: None.

HEARING ON HB 153**Opening Statement by Sponsor:**

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 153**, Protect utility assets from affiliates.

He informed the Committee, this bill is about "ring fencing", as a result of transactions of Northwestern Energy (NW) bankruptcy. The recommendation by the Public Service Commission (PSC) is that they have authority to establish the requirements to review and approve material affiliate transactions of regulated energy utilities. A regulated utility may not enter into a transaction without the PSC approval. He discussed an "affiliate transaction", and explained that it is a financial transaction between the utility operations of a regulated energy utility and an affiliate. A material affiliate transaction means that it has a significant potential impact on the financial stability of a regulated energy utility, such as dividend payments to a corporate parent company that would place the regulated energy utility's credit quality or property in jeopardy. He discussed an exemption of a regulated energy utility when a regulated utility has entered into a stipulation agreement with the PSC regarding the separation of its non-regulated utility business is exempt as long as the stipulation agreement remains effective under a federal bankruptcy court order. He added this bill is effective on passage and approval.

Proponents' Testimony:

Greg Jergeson, Commissioner, Chairman of the Public Service Commission (PSC), said this bill is good public policy, and hoped the Committee will support it. He commended the House Committee for the amendment they placed on the bill. He informed the Committee that he didn't know what "ring-fencing" was until he started with the PSC. He had attended a conference in 2003, National Association of Regulatory Commissioners Summit (NARCS) in Denver, when he learned that "ring fencing" is putting a ring around a utility to protect the utility from deterioration in non-utility kinds of enterprises. He said this is done with many utilities throughout the states, and it is a problem. There was a recommendation from NARCS that the states adopt some kinds of "ring-fencing" to protect the rate payers. When NW approached bankruptcy, it was too late for them to adopt this "ring fencing". He added that a part of the settlement with NW includes a "ring fencing" provision agreement. He discussed the number of models that utilities can use for re-structuring, and bankruptcy is one of them. He stated that the Committee he was involved with NARCS, who decided that this bill is good public

policy for the state of Montana, and the reason the PSC supports HB 153. He urged the Committee to support this bill.

EXHIBIT (ens51a01)

Bob Nelson, representing the Montana Consumer Council, discussed affiliate transactions and affiliate interest issues. He talked about the NW bankruptcy and the stipulation addressed in this bill. This bill will prevent in the future what happened to NW. He urged the Committee to support this bill.

John Fitzpatrick, representing NorthWestern Energy (NW), stated their support for HB 153.

Opponents' Testimony:

John Alke, representing Montana Dakota Utilities (MDU), informed the Committee the purpose and the reason for this bill is NW's financial difficulties. He discussed the amendment placed on the bill by the House Committee, New Section 3, page 2, lines 21-24, on Exemptions. He informed the Committee this bill exempts NW. He explained who this bill applies to. It applies to; 1) NW, who is financially weak and in bankruptcy, 2) MDU, who is financially strong, and 3) Great Falls Gas. He asked the House Committee when the bill was in the House for an amendment on page 2, line 20, to strike "including, but not limited to", and inserting, "such as", and this wasn't done. He informed the Committee by passing this bill that started out by targeting specific numbers, and now NW is exempt from this bill. He discussed MDU being financially strong, and this bill doesn't apply to them. He urged the Committee to not support this bill.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. HARRINGTON asked why NW is not included in this bill. **REP. NOENNIG** said that the bill was introduced without Section 3, which was added on in the House Committee. It is a result of a task force on the interim committee recommendation. There was some legal issue that NW was involved with regarding whether that stipulation in Section 3 would apply, and the agreement entered into would supercede this bill.

SEN. MCGEE asked, when the bill was first introduced it included NW, and he wanted to know why it is out now. **REP. NOENNIG** wasn't sure, but thought that the new Section 3 superceded them. Without this amendment, it would place NW back in under this bill. He talked about page 1, line 17, being too broad, and Mr.

Alke's amendment on page 1, line 20, to strike and insert different language; he felt wouldn't make a difference.

SEN. ROUSH asked **Greg Jergeson, Commissioner**, if new Section 3 of the bill helps the PSC and NW bankruptcy, or if this amendment was needed for something else. **Commissioner Jergeson** said that the new Section 3, doesn't exempt NW from "ring fencing". It exempts NW from the provisions of this bill, and everyone else in-state are covered by the "ring fencing" agreement between NW, Montana Consumer Counsel, and the PSC. He stated that MDU is a well-run company, and he didn't feel that the relationship between the PSC and MDU would change.

SEN. CROMLEY asked about the time period on restructuring. **Commissioner Jergeson** deferred the question to John Fitzpatrick. **Mr. Fitzpatrick** replied that the stipulation NW entered into with the PSC isn't that detailed. He said it is more detailed in statutory language in this bill. The "ring fencing" stipulation has a estimated life of approximately 36 to 42 months, depending on how soon the company plans to get its financial house in order, then the stipulation will probably be extinguished. He informed the Committee that the overriding document that covers the "ring-fencing" provision will be a stipulation, then it will be extinguished, and then NW will fall under the statutory language.

SEN. PERRY asked if it is customary to have a public hearing prior to a decision. **Commissioner Jergeson** replied, yes. **SEN. PERRY** said he is confused about the language on page 2, line 8, that the PSC shall approve or deny the material affiliate transaction upon showing of good cause, there shall be a hearing. He asked, why is there a need of showing good cause, and why isn't there just a public hearing properly notified prior to a decision. **Commissioner Jergeson** said a hearing wouldn't come before a decision until a showing of good cause.

{Tape: 1; Side: B}

The question was deferred to **REP. NOENNIG** who said he didn't write this, but it is his understanding on page 2, line 8 (2), that it shows what the power is of the PSC.

CHAIRMAN TOOLE commented that when he looks at the definition of "affiliate material transaction" it is affiliate material transaction that has significant potential, and is it "potential" that triggers the hearing. **Mr. Nelson** responded that it is his understanding it is one of the elements that goes into the showing of good cause.

SEN. CROMLEY said he has problems with language on page 2. He asked if there will be a public hearing on each exempt of material affiliate transaction. **Mr. Nelson** replied, it is his understanding. When the bill is in effect, a public utility will contact the PSC to review the transactions. The question was deferred to **Commissioner Jergeson** who replied, when a utility would file a document that is proposing a transaction, they come in with a notice asking the PSC to justify a public hearing.

SEN. ESSMANN asked **Mr. Alke** to respond. He stated that the comments he has heard in the last five minutes have now put him in the terrified category. He said the Committee needs to understand if they impose legislation, the PSC could not reject a utility application. He said for the PSC to reject an application for a utility without first telling the utility a hearing will be heard. It is due process. He said the problem with this bill is it requires pre-approval. He said when MDU entered into a affiliate transaction, they didn't go to the PSC to ask for approval, because the PSC has full authority to review the transaction after the fact. He said this bill requires pre-approval by the PSC before the transaction even occurs.

CHAIRMAN TOOLE asked **Mr. Nelson** to explain the NW bankruptcy, and what the specific problems were. **Mr. Nelson** said that NW had several affiliate transactions with several companies who held the assets, and NW assumed the debt. **CHAIRMAN TOOLE** asked if MDU could run into the same problem that NW went through. **Mr. Nelson** replied that he is comfortable with the way MDU is operating.

Closing by Sponsor:

REP. NOENNIG closed. He informed the Committee that a denial of request cannot be done without a good cause hearing to be denied or limited. **REP. NOENNIG** passed around for review a copy of the NorthWestern Corporation, Chapter 11, Notice of Stipulation.

EXHIBIT(ens51a02)

HEARING ON HB 199

{Tape: 2; Side: A}

Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, opened the hearing on **HB 199**, Revise laws related to energy policy.

He informed the Committee the bill is a result of SB 390 in the 1997 Legislature that followed the de-regulation process, and the electrical utility restructuring transmission advisory committee was set up as a interim committee. There was a identifying need to study energy. Some of the issues that came before the interim committee was for legislature oversight over the PSC to work on energy policy. The bill revises laws related to energy policy development by providing that the energy and telecommunications interim committee has administrative rule review, draft legislation review program evaluation, and monitoring. He said the bill was heavily amended in the House Committee. He stated that out of the two interim committees, it was decided that energy policy development process will go to the interim energy and telecommunications committee instead of the environmental quality council.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. OLSEN closed.

ADJOURNMENT

Adjournment: 4:20 P.M.

SEN. KEN TOOLE, Chairman

CLAUDIA JOHNSON, Secretary

KT/cj

Additional Exhibits:

EXHIBIT ([ens51aad0.TIF](#))